



California Regulatory Notice Register

REGISTER 2005, NO. 35-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

SEPTEMBER 2, 2005

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by the Office of State Publishing and is offered by subscription for \$302.00 (annual price). To order or make changes to current subscriptions, please call (916) 445-5353 or (916) 445-5386. For outside of the Sacramento area, call (800) 963-7860. Periodicals postage paid at Sacramento, CA and additional mailing offices. **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Customer Coordinator, Office of State Publishing, 344 N. 7th Street, Mass Mail/Addressing Services, Sacramento, CA 95814-0212. The Register can also be accessed at <http://www.oal.ca.gov>.

PROPOSED ACTION ON REGULATIONS

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TITLE 2. DESERT COMMUNITY COLLEGE DISTRICT

NOTICE OF INTENTION TO AMEND CONFLICT-OF-INTEREST CODE

NOTICE IS HEREBY GIVEN that Desert Community College District intends to amend a conflict-of-interest code pursuant to **Government Code Sections 87300–87302 and 87306**. Pursuant to Government Code Section 87302, the code will designate employees who must disclose certain investments, income, interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

A written comment period has been established commencing on **September 17, 2005 and terminating on November 1, 2005**. Any interested person may present written comments concerning the proposed code no later than **November 1, 2005** to **Dr. David Bugay, Office of Human Resources**, Desert Community College District, 43-500 Monterey Avenue, Palm Desert, California 92260. No public hearing on this matter will be held unless any interested person or his or her representative requests a **public hearing** no later than 15 days prior to the close of the written comment period.

The Desert Community College District has prepared a written explanation of the reasons for the designations and the disclosure responsibilities and has available all of the information upon which its proposal is based.

The Desert Community College District proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of Section 27302 of the Government Code.

The proposed amendments also provide for non-substantive technical clean-up as well as substantive changes, including adding new positions, revising disclosure categories, deleting positions that manage public investments and changing

position titles. All of these amendments will reflect the current organizational structure of Desert Community College District.

Copies of the proposed code and all of the information upon which it is based may be obtained from Office of Human Resources, Desert Community College District, 43-500 Monterey Avenue, Palm Desert, California 92260. Any inquiries concerning the proposed code should be directed to Dr. David Bugay, Vice President/Human Resources and Employee Relations, (760) 773-2529.

The adoption of the proposed amendments will not impose a cost or savings on Desert Community College District that is required to be reimbursed under Part 7 (commencing with Section 17500 of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to Desert Community College District; will not impose a mandate on Desert Community College District; and will not have any potential cost impact on private persons or businesses, including small businesses.

Desert Community College District has determined that no alternative considered by this agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. (California Code of Regulations, Title 2, Section 18750)

TITLE 8. AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF PROPOSED REGULATORY ACTION TO AMEND TITLE 8, SECTION 20299

Notice is hereby given that the Agricultural Labor Relations Board (ALRB or Board), pursuant to the authority vested in it by section 1144 of the Labor Code to make, amend, or rescind rules and regulations as may be necessary to implement, interpret, and make specific the provisions of the Agricultural Labor Relations Act (ALRA)(Labor Code sec. 1140, et seq.), proposes to amend section 20299 of its regulations. The Board's regulations are codified in Title 8, California Code of Regulations, section 20100, et seq. The proposed amendments are described below in the Informative Digest. An initial statement of reasons for the amendment of these regulations, along with the text of proposed amendments, has been prepared by the ALRB and is available upon request by contacting J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 915 Capitol Mall, Third Floor, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: jbarbosa@alrb.ca.gov or Joseph A. Wender, Jr., Senior Board Counsel, same address and fax number as above, (916) 651-7620, e-mail: jwender@alrb.ca.gov. This notice, as well as

the initial statement of reasons and text of the proposed regulation, also may be found on the Board's website at www.alrb.ca.gov. The final statement of reasons, once it has been prepared and submitted to the Office of Administrative Law, shall be available in the same manner as the initial statement of reasons.

The ALRB invites all interested persons to submit written comments on the proposed amendments. Comments must be received at ALRB headquarters at the address listed above by 5:00 p.m. on October 24, 2005. A public hearing is not scheduled. However, any interested person or his or her duly authorized representative may submit, in writing, no later than October 11, 2005, a request that a public hearing be held on the proposed amendments.

ADOPTION OF PROPOSED REGULATION

After the comment period closes, and a hearing, if requested, is held, the Board will consider all public comment, written and oral, and decide whether to make any changes to the proposed amendments. The Board may adopt the proposed amendments if no substantial changes are made. If the Board decides to make substantial changes that are "sufficiently related" to the initial proposals, the public will be given notice of those changes and will be given at least 15 days to provide comment. If the Board decides to make "major" changes to the proposals that are "not sufficiently related to" the initial proposals, a new notice of proposed action will issue allowing for a new 45-day comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 20299. Agricultural Employee Relief Fund.

Labor Code section 1161 provides that where the Board orders monetary relief and, despite diligent efforts, employees to whom the monies are owed cannot be located within two years after collection of the monies on their behalf, such monies will be deposited in the Agricultural Employee Relief Fund (Fund). The Fund is then be used to pay employees the unpaid balance of monetary relief ordered by the Board in cases where the Board determines that collection of the full amount owed by the employer is not possible. The Board adopted Regulation 20299, providing comprehensive procedures for administering the Fund. That regulation took effect on October 3, 2002, and was amended effective May 19, 2004. The Board proposes two further amendments, as described below.

1) Reduction of Eligibility Period from Five to Two Years

Presently, the regulation states that eligibility for payout from the Fund shall continue for five consecutive annual payouts, after which eligibility shall expire. In theory, the five-year period maximizes the possibility of a claimant receiving something from the Fund, since the amount of money in the Fund could vary dramatically from year to year. However, the Board now believes that such a lengthy eligibility period unacceptably dilutes the payouts from the Fund by increasing the number of claimants in any given year. A shorter eligibility period would provide more substantial payouts to eligible claimants. In addition, where there are a large number of claimants becoming eligible in a given year, with aggregate claims far exceeding the balance in the Fund, this will exhaust the Fund balance for the ensuing five years of eligibility of those claimants. There are several existing cases of that character where collection of monies owed from the employer appears not to be possible and thus likely will be the subject of motions to make the effected employees eligible for payout from the Fund. In such a scenario, it is likely that those claimants will receive a very small allocation from the Fund in their first year of eligibility and nothing in their last four years of eligibility. Moreover, claimants from other cases who have the misfortune of becoming eligible during that period likely will receive little or nothing. In addition, due to the age of some of the large cases, it is likely that few claimants will be found, but the amount of their claims would nonetheless be held for them for five years, making that money unavailable to pay claimants in other cases who can be found.

Therefore, the Board proposes to reduce the eligibility period to two years.

2) Clarification of When Unclaimed Payouts Revert to the Fund

Presently, the regulation states that in the event a payee can not be located, the money shall be held for one year after expiration of eligibility, then the claim is extinguished and the money goes back in the Fund for distribution to others. Where a claimant is not paid 100% until the last year of eligibility, or whose eligibility expires without being allocated 100% of the claim, it is clear that the one-year period to locate the claimant before his or her allocations revert to the Fund begins after eligibility expires (five years under the existing regulation). However, the existing regulation lacks clarity as to what happens where a claimant is allocated 100% of the claim in less than the full five years. For instance, if there are sufficient monies in the Fund to pay 100% of the claim in the first year of eligibility, must efforts to locate the claimant continue

for the next five years (four years of eligibility and one year thereafter to locate) before the money reverts to the Fund to pay others' Or in such an instance is eligibility considered to have expired upon allocation of 100% of the claim, so that in the example above the money would revert to the Fund if after one year from the 100% allocation the claimant cannot be found'' The Board believes the existing language is most susceptible to the interpretation that monies revert to the Fund within one year of a claimant being allocated 100% of his or her complete claim. The alternate interpretation holds the potential of tying up monies for up to five years, even if there is little chance of locating the claimant. The result would be that other claimants during that time period who can be located will have their payouts diluted by the claims of the numerous claimants who cannot be located. This was not the result intended by the Board.

Therefore, the Board proposes clarify that allocations assigned to claimants who cannot be located revert to the Fund one year after expiration of eligibility or after allocation of 100% of the claim, whichever occurs first.

RULEMAKING FILE

Pursuant to Government Code sections 11346.5 and 11347.3, the Board shall maintain a rulemaking file containing all materials considered in the rulemaking process.

The file currently contains:

1. A copy of this notice
2. A copy of the Initial Statement of Reasons
3. Text of the Proposed Amendments to Sections 20299 and 20390

As other materials are received, such as written comments, studies, reports, etc., they will be added to the rulemaking file. The file is available for inspection at the headquarters office of the ALRB, 915 Capitol Mall, Third Floor, Sacramento, CA, during normal business hours.

ALTERNATIVES TO PROPOSED ACTION

The Administrative Procedure Act requires that the Board, in taking any regulatory action, determine that no alternative considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

LOCAL MANDATE STATEMENT

The proposed regulatory changes would not impose any mandate on local agencies or school districts.

IMPACT STATEMENTS

- A. Estimated fiscal impact on local government or school districts: None.
- B. The proposed changes would result in no cost or savings to any state agency, or cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, nor impose other nondiscretionary cost or savings on local agencies or effect cost or savings in federal funding.
- C. Fiscal effect on private persons or businesses directly affected: No increase in costs.
- D. The proposed changes would have no effect on small business because the changes impose no new burdens upon parties appearing before the Board.
- E. The proposed changes would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- F. The proposed changes would have no effect on the creation or elimination of jobs within the State of California, no effect on the creation of new businesses or the elimination of existing businesses within the State of California, and no effect on the expansion of businesses currently doing business within the State of California.
- G. The ALRB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. The proposed changes would have no effect on housing costs.

INQUIRIES

Any inquiries concerning any aspect of the proposed regulatory action noticed herein should be directed to J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 915 Capitol Mall, Third Floor, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: jbarbosa@alrb.ca.gov or Joseph A. Wender, Jr., Senior Board Counsel, same address and fax number as above, (916) 651-7620, e-mail: jwender@alrb.ca.gov. Questions concerning the substance of the proposed amendments may be directed to Mr. Wender.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **October 20, 2005**, at 10:00 a.m. in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **October 20, 2005**, following the Public Meeting in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **October 20, 2005**, following the Public Hearing in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on October 20, 2005.

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**

Chapter 4, Subchapter 4, Article 24
Section 1644

Metal Scaffolds

2. **TITLE 8: SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS**

Chapter 4, Subchapter 18, Article 3,
Section 8354 and

Article 8, New Sections 8397.14,
8397.15, and 8397.16

**Fire Protection in Shipyard
Employment II**

A description of the proposed changes are as follows:

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**

Chapter 4, Subchapter 4, Article 24
Section 1644

Metal Scaffolds

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action is being initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a Form 9, Request for New, or Change in Existing Safety Order, dated March 7, 2005, recommending that the maximum height of the intersection of crossbracing used in lieu of a standard guardrail with a midrail on a scaffold be reduced from 36 inches above the work platform to 30 inches. The Division noted that the 36-inch maximum height of the crossbracing intersection, contained in Construction Safety Orders, Section 1644(a)(6)(B), is inconsistent with the Federal OSHA counterpart standard found in 29 Code of Federal Regulations (CFR) 1926.451(g)(4)(xv), which permits a maximum height of 30 inches. Consequently, the state standard is not at least as effective as its federal counterpart standard.

Section 1644(a)(6)(B)

Existing Section 1644(a) contains general requirements pertaining to metal scaffolds, including but not limited to weight design, planks, ties, use of guys or outriggers to prevent tipping or upsetting, wind loading, and railings. Section 1644(a)(6) requires that securely attached railings as provided by the scaffold manufacturer, or other material equivalent in strength to the standard 2- by 4-inch wood railing made from "selected lumber," be installed on open sides and ends of work platforms 7 ½ feet or more above grade. The top rail shall be located at a height of not less than 42 inches nor more than 45 inches measured from the upper surface of the top rail to the platform level. A midrail shall be provided approximately halfway between the top rail and the platform. Subparagraph (B) to 1644(a)(6) states that "X" bracing is acceptable as a midrail if the intersection of the "X" falls between 20 inches and 36 inches above the work platform. This 36-inch maximum height of the intersection of the crossbracing is inconsistent with federal counterpart standards contained in 29CFR1926.451, which limits the height to only 30 inches.

Pursuant to Labor Code Section 142(a)(2), the Occupational Safety and Health Standards Board (Board) is required to adopt standards at least as effective as comparable federal standards. Therefore, an amendment is proposed to reduce the maximum height of the crossbracing intersection to 30 inches in order to be at least as effective as its federal counterpart standard. The proposed amendment would have the effect of reducing the intersection height of crossbracing on scaffolds, used in lieu of a standard guardrail with a midrail, for consistency with requirements contained in 29CFR1926.451.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.) The proposed standard does not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the

State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8: SHIP BUILDING, SHIP REPAIRING AND SHIP BREAKING SAFETY ORDERS Chapter 4, Subchapter 18, Article 3, Section 8354 and Article 8, New Sections 8397.14, 8397.15, and 8397.16 **Fire Protection in Shipyard Employment II**

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated standards addressing Fire Protection in Shipyard Employment on September 15, 2004, as 29 Code of Federal Regulations, Sections 1915.501, .502, .503, .504, .505, .506, .507, .508, and .509. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 69, No. 178, pages 55,668–55,708, September 15, 2004, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards, which are the same as the federal standard except for editorial and format differences.

The federal Fire Protection in Shipyard Employment; Final Rule standard was developed through the federal negotiated rulemaking process and will provide increased protection from fire hazards for nearly 98,000 workers in the ship building, ship repair and ship breaking (Shipyard) industries. The Final Rule incorporates 19 national consensus standards from the National Fire Protection Association (NFPA) and includes relevant information from other sources, including federal OSHA's general industry standard on fire protection, as well as procedures from the U.S. Navy and U.S. Coast Guard. The federal standard requires a written fire watch policy and also discon-

tinues the practice allowing workers who perform hot work, such as welding cutting, or grinding to act as their own fire watch. The Final Rule also affords employers flexibility by allowing them to rely on a combination of fire response organizations (e.g., internal, external, or both) rather than requiring them to establish internal fire brigades.

On March 17, 2005, the Board adopted proposed amendments to Title 8, Chapter 4, Subchapter 18, Article 3, Section 8354 and Article 8, Section 8397 and new Sections 8397.10, .11, .12 and .13 of the Ship Building, Ship Repairing and Ship Breaking Safety Orders. The proposed amendments were intended to render California's shipyard standards at least as effective as the federal standard previously mentioned. The proposed amendments adopted by the Board at the March 17, 2005, Business Meeting addressed the following issues: definitions, standards pertaining to multi-employer worksites, fire safety plans, fire response, and employee training. At the time, the Board staff believed that issues pertaining to hot work precautions, fire watches, and land-side fire protection along with a number of additional related definitions were adequately addressed by existing Title 8 shipyard standards. However, on March 4, 2005, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), Region IX reported via e-mail that they had concluded their review of the side by side code comparison submitted by the Board with the rulemaking package and determined that a number of issues addressed by federal shipyard standards were not adequately addressed by existing Title 8 standards. Following review of federal OSHA's March 4, 2005, e-mail (comments) to the Board, reevaluation of federal and Title 8 shipyard standards and discussions with representatives from Region IX, the Board staff proposed further amendments to Title 8 to address those issues identified in the March 4, 2005, e-mail. Consequently, this proposed rulemaking action consists of additional shipyard definitions, and addresses precautions for hot work, fire watches, and landside fire protection systems. This proposal does not address standards pertaining to hazards of fixed fire extinguishing systems on board vessels as they represent issues for which California's Occupational Safety and Health program lacks enforcement jurisdiction.

The proposed standards are substantially the same as the final rule promulgated by federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard; however, the Board is still providing a public comment period and will convene a public hearing. The primary

purpose of the written and oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State. The standard may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

DOCUMENTS INCORPORATED BY REFERENCE

1. NFPA 10-1998, Standard for Portable Fire Extinguishers
2. NFPA 14-2000, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems
3. NFPA 72-1999, National Fire Alarm Code
4. NFPA 25-2002, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
5. NFPA 13-1999, Standard for the Installation of Sprinkler Systems
6. NFPA 750-2000, Standard on Water Mist Fire Protection Systems
7. NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection
8. NFPA 11-1998, Standard for Low-Expansion Foam
9. NFPA 11A-1999, Standard for Medium- and High-Expansion Foam Systems
10. NFPA 17-2002, Standard for Dry Chemical Extinguishing Systems
11. NFPA 12-2000, Standard on Carbon Dioxide Extinguishing Systems
12. NFPA 12A-1997, Standard on Halon 1301 Fire Extinguishing Systems
13. NFPA 2001-2000, Standard on Clean Agent Fire Extinguishing Systems

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

According to Section IV., Summary of Final Economic and Regulatory Flexibility Analysis, beginning on page 55,698 of the federal Final Rule Preamble, federal OSHA states that the final standard will affect approximately 669 employers and about 98,000 employees in the ship building, ship repair and ship breaking industries nationwide. OSHA estimates that the final standard will prevent 1 death and 292 workplace injuries (102 lost workday injuries) annually. The Agency estimates approximately \$6.2 million in cost savings from these 292 injuries. Furthermore, federal OSHA has determined that the final standard is not an economically significant regulatory action and not a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act.

Federal OSHA learned through the course of its negotiated rulemaking process in which labor and management representatives deliberated over the development of the Final Rule provisions, that the parties were able to reach consensus on practically all of the issues addressed in the Final Rule. This was largely attributable to the fact that many firms in the ship building industry are already implementing the controls and practices required by the standard. Based on discussions with a representative from California's largest ship building company about the proposed amendments, staff learned that the cost impact of what are largely administrative controls is expected to be minimal. This is because the standards contained in this proposal have to a significant degree been implemented. This is consistent with the federal OSHA finding that ship builders across the country including California are already implementing the proposed standards including those standards pertaining to land-side fire protection.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state

policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed standards do impose unique requirements on local governments. All state, local and private employers will be required to comply with the proposed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no

later than October 14, 2005. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on October 20, 2005, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 10. DEPARTMENT OF INSURANCE

REGULATION FILE: RH 05046584

DATE: August 18, 2005

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulation described below. The Commissioner proposes to adopt the Workers' Compensation Deposit Requirements Regulation, which will clarify California Insurance Code § 11691(f)(2).

AUTHORITY AND REFERENCE

The proposed regulation will implement, interpret and make specific the provisions of Insurance Code § 11691(f)(2). Insurance Code § 11691 provides the authority for this rulemaking.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: October 18, 2005, at 10:00 a.m.

Location: California Department of Insurance
Hearing Room, 22nd Floor
45 Fremont Street
San Francisco, CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS;
CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulation during the public comment period. The public comment period will end at 5:00 p.m. on October 18, 2005. Please direct all written comments to the following contact person:

Valerie J. Sarfaty
Staff Counsel
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105
Telephone: (415) 538-4459

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

James W. Holmes
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4422

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons, at his respective address listed above, no later than 5:00 p.m. on October 18, 2005. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY
E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: sarfatyv@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile, provided they are directed to the attention of Valerie J. Sarfaty and sent to the following facsimile number: (415) 904-5896.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

INFORMATIVE DIGEST

Summary of Existing Law and
Policy Statement Overview

California Insurance Code §§ 11691 et seq. require admitted insurers to make statutory deposits and also set forth a reinsurer's obligation, when reinsuring such business, to identify in a form prescribed by the Commissioner, amounts deposited for credit in the name of each ceding insurer. The proposed regulation specifies and clarifies a reinsurer's obligation, and the satisfaction of that obligation, in the event that the Commissioner draws upon the workers' compensation deposit made by the reinsurer under the reinsurance agreement.

Certain amendments to Insurance Code §§ 11690 et seq., which took effect on January 1, 2003, set forth reporting and other requirements regarding reinsurance agreements that cover workers' compensation business. This reporting requirement gives the California Department of Insurance ("Department"), for the first time, in the event of the insolvency of a workers' compensation insurer, the ability to access not only the workers' compensation deposit made by the insolvent insurer, but also the deposit made by a reinsurer to cover that portion of the insurers' obligation that it assumed under the reinsurance contract.

Based on the changes in §§ 11690 et seq. and in the Department's ability to identify and call upon the reinsurer's workers' compensation deposit, certain reinsurers and their association claim to be concerned about a future possibility that they may be subject to two demands on the same funds, if the California Insurance Commissioner calls on an insolvent non-domestic workers' compensation insurer's reinsurer deposit to pay a reinsured California workers' compensation policy claim, while at the same time, the home state receiver orders the reinsurer to pay all of the reinsurance to the insolvent insurer's estate, with no deduction for the California claim payment. This has never happened before and probably never will, because payment of the California claim from the deposit would reduce the reinsurer's overall obligation to the estate by that amount. However to address this possibility, the proposed regulation was drafted to clarify that the deposit obligation, and the use of deposited assets remains unchanged, notwithstanding the reinsurance arrangement, and that any use of the reinsurance deposit proceeds to pay specific California workers' compensation claims will result in the

satisfaction and release of those claim obligations. To the degree that it helps to achieve this goal, the proposed regulation is reasonably necessary.

Effect of Proposed Action

No impact is anticipated as a result of implementation of the proposed regulation. Until recently, the Department did not have the ability to draw upon the reinsured portion of the workers' compensation deposit of an insolvent insurer. Since the January 1, 2003, change in the law, the possibility that the Commissioner might call on the reinsured portion of the workers' compensation deposit resulted in the Reinsurance Association of America raising the concerns of its constituents that there might be the possibility that both the California Commissioner and a non-California domestic receiver could draw upon the same funds. The regulation should have the beneficial impact of making it unlikely that this could happen.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulation does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are reinsurers. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner is not aware of any cost impacts that a representative, private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state of California that the regulation applies to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulation may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner estimates that the proposed regulation will have no effect on jobs and businesses in California, except to assure reinsurers that their workers' compensation reinsured obligations will be discharged if their deposits are drawn down.

IMPACT ON HOUSING COSTS

The regulation proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulation is imposed or would be as effective as and less burdensome to affected private persons than the proposed regulation. The Commissioner invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulation will not affect small business. Pursuant to Government Code § 11342.610, subdivision (b), paragraph (2), insurers are not small businesses.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulation.

TEXT OF REGULATION AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulation. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulation, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 23rd Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulation, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find near the end of the rightmost column, under the heading "Quick Links," the "Legal Information" link. Click it. On the "Legal Information" page, click on the "Proposed Regulations" link near the top of the page. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH 05046584" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of the code section that the regulations implement ("11691"), or search by keyword ("workers' compensation deposit," for example). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Workers' Compensation Deposit Requirements Regulation" link, and click it. Links to the documents associated with this regulation will then be displayed.

MODIFIED LANGUAGE

If the regulation adopted by the Department differs from those which have originally been made available but are sufficiently related to the action proposed, it will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of the regulation prior to adoption from the contact person listed above.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Amend Regulations 1005, 1007, and 1008, Procedures D-1, D-10 and D-14, and update the Training and Testing Specifications for Peace Officer Basic Courses

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code sections 13503 (powers of the Commission on POST) and 13506 (Commission on POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code sections 13503(e)(Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses), 13510 (Commission on POST authority to adopt and amend rules establishing minimum standards for California local law enforcement officers) and 13510.5 (Commission on POST authority to adopt and amend standards for certain other designated California peace officers).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At its July 21, 2005 meeting, the Commission approved proposed amendments to 38 Learning Domains throughout the *Training and Testing Specifications for Peace Officer Basic Courses* publication, incorporated by reference into POST Regulations 1005, 1007 and 1008, and Procedures D-1, D-10 and D-14. The proposed changes included:

- Modifying language for clarification, accuracy, and grammar purposes;

- Integrating Leadership, Ethics and Community Policing (LECP) curriculum;
- Updating POST scenario testing methodology and evaluation; and
- Revising curriculum to ensure proper alignment with entry-level officer tasks

All changes to academy curriculum begin with recommendations from law enforcement practitioners or, in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and subject matter experts (SMEs) who provide recommended changes to existing academy curriculum. These recommendations are then submitted to the Standing Alignment Committee (SAC), chaired by non-POST personnel and comprised of academy directors and coordinators. The SAC approved recommendations are then submitted for review by all academies at the Basic Course Consortium quarterly meetings facilitated by POST. Once approved by majority vote of all academies, the recommendations are forwarded to a Test Review Panel, also comprised of academy administrators that identify testing questions and pass point thresholds for the new curriculum. The completed work of all committees is then submitted to the POST Commission for final review. In addition to amending the learning domains for the aforementioned reasons, the SMEs also propose non-substantial changes at the same time to improve clarity and readability of the domains.

Upon adoption of the proposed amendments, academies and course presenters will be required to teach and test to the updated curriculum. The proposed effective date is January 1, 2006.

PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. All written comments must be received at POST no later than 5:00 p.m. on October 17, 2005. Written comments should be directed to Kenneth J. O'Brien, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, or by fax at 916.227.2801.

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person, or his or her duly authorized representative, may request in writing, no later than 15 days prior to the close of the public comment period, that a public hearing be held.

ADOPTION OF PROPOSED REGULATIONS

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the

Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available, at least 15 days before adoption, to all persons whose comments were received by POST during the public comment period, and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text is made available.

TEXT OF PROPOSAL, RULEMAKING FILE, AND INTERNET ACCESS

The following information regarding the proposed regulatory action is provided on the POST website at www.post.ca.gov/RegulationNotices/RegulationNotices.asp:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Anyone who does not have Internet access may request a copy of the documents listed above by calling 916.227.4847 or by submitting a written request to the contact person listed below. Please refer to POST Bulletin 2005-15. The rulemaking file contains the above-mentioned documents and all information upon which this proposal is base. The file will be maintained for inspection during the Commission's normal business hours (Monday through Friday, 8: a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. A copy may be requested via the above phone number, by writing to the address under Contact Persons at the end of this notice, or by viewing the document on the POST Internet website at the address cited above.

ESTIMATE OF ECONOMIC IMPACT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-Discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly

affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will have no effect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

ASSESSMENT

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California, and will not result in the elimination of existing businesses or create or expand businesses in the state of California.

CONSIDERATION OF ALTERNATIVES

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to effected private persons than the proposed action.

CONTACT PERSONS

Please direct any inquiries or comments pertaining to the proposed action to Patricia Cassidy, Associate Analyst, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Pat.Cassidy@post.ca.gov. The back-up contact person for this proposal is Julie Hemphill, Associate Analyst; she may be reached by telephone at 916.227.0544, or by email at Julie.Hemphill@post.ca.gov.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER MINOR AMENDMENTS TO THE EXHAUST EMISSION STANDARDS FOR NEW HEAVY-DUTY DIESEL ENGINES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted

below to consider adoption of minor amendments to California regulations for new heavy-duty diesel engines and trucks.

DATE: October 20, 2005
TIME: 9:00 a.m.
PLACE: California Environmental
 Protection Agency
 Air Resources Board
 Byron Sher Auditorium
 1001 I Street
 Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 20, 2005, and may continue at 8:30 a.m., October 21, 2005. This item may not be considered until October 21, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before October 20, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendment to title 13, California Code of Regulations (CCR), section 1956.8 and the incorporated "Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Year Heavy-Duty Engines and Vehicles" as last amended December 12, 2002.

BACKGROUND

Health and Safety Code (HSC) sections 43013 and 43018 direct the ARB to adopt emission standards for new heavy-duty motor vehicles to achieve maximum feasible emission reductions. HSC section 43104 directs the ARB to adopt test procedures to ensure compliance with those emission standards. Further, in 2000, the Board approved the Diesel Risk Reduction Plan, which recommended tightening particulate matter (PM) emission standards for heavy-duty diesel engines and vehicles. The 2003 State and Federal Strategy for the California State Implementation Plan (SIP) also calls for the reduction of reactive organic gases (ROG) and oxides of nitrogen (NOx) which, when combined with high ambient temperatures and sunlight, form ozone air pollution. NOx emissions contribute to secondary PM formation as well.

Exhaust emissions from heavy-duty diesel engines and vehicles have been regulated in California since

1973. With technological advancements and improved engine designs, more stringent standards have been implemented. For example, 2004 model-year engines must be certified to 50 percent lower NOx emissions compared to 1998 levels. When California's aftertreatment-forcing emission standards become effective in 2007, both NOx and PM emissions will be reduced by another 90 percent.

STAFF PROPOSAL

Staff is proposing minor revisions to title 13, CCR, section 1956.8 and the "Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Year Heavy-Duty Engines and Vehicles." The provisions will provide engine manufacturers the option to certify 2005 and 2006 model-year heavy-duty diesel engines to a lower PM standard of 0.01 gram per brake horsepower-hour (g/bhp-hr). Specifically, this new option would provide engine manufacturers the flexibility to certify engines to the optional lower PM standard for non-urban bus applications. Such engines would qualify to participate in the Carl Moyer program. However, engine manufacturers certifying to this new option will not be able to participate in any average, banking, and trading provisions for those engines. Additionally, staff's proposal would also modify the NOx exhaust emission standard for 2007 and subsequent model year heavy duty diesel engines to 0.20 g/bhp-hr, which in an earlier rulemaking was inadvertently specified as 0.2 g/bhp-hr.

COMPARABLE FEDERAL REGULATIONS

In January and October 2001, the United States Environmental Protection Agency (U.S. EPA) and ARB, respectively, adopted new, harmonized exhaust emission standards for new 2007 and subsequent model heavy-duty diesel engines and vehicles. The proposed requirement that the NOx exhaust emission standard be set to 0.20 grams per brake horsepower-hour (g/bhp-hr) instead of 0.2 g/bhp-hr harmonizes the U.S. EPA and ARB requirements. However, there are no comparable federal regulations that provide manufacturers the option to certify 2005 and 2006 model year heavy-duty diesel engines to a PM emission standard of 0.01 g/bhp-hr for non-urban bus applications.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a summary of the proposed requirements which is included in the Staff Report: Initial Statement of Reasons (ISOR) for the proposed truck idling emission reduction requirements. The report is entitled: "Notice of Public Hearing to Consider Minor Amendments to the Exhaust Emission Standards for New Heavy-Duty Diesel Engines.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on October 20, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Stephan Lemieux, Manager, On-Road Heavy-Duty Diesel Section, (626) 450-6162, or Mr. Daniel Hawelti, Air Resources Engineer, (626) 450-6149.

Further, the agency representative and designated back-up contact persons to who nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/hdde2005/hdde2005.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The proposed amendments are minor amendments to the "Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Year Heavy-Duty Engines and Vehicles". The requirement to certify 2007 and subsequent model year heavy-duty diesel engines to 0.20 g/bhp-hr NOx emissions was adopted on October 25, 2001. Therefore, economic impact analyses are included in the staff report entitled "Notice of Public Hearing to Consider Amendments to Adopt Reduced Emission Standards for 2007 and Subsequent Model Year New Heavy-Duty Diesel Engines". In the earlier rulemaking it was staff's intent that the change now being proposed was in the original rulemaking. Therefore, the economic impact analysis included in the staff report covered, among other things, the economic impact of the amendments in this rulemaking. The amendment now being

proposed will not result in any additional economic costs to affected businesses.

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create any costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR of the already adopted 2007 and subsequent model year new heavy-duty diesel engine standards.¹

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not significantly affect small businesses.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is

proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, October 19, 2005**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

Electronic mail is to be sent to: **[hdde2005@listserv.arb.ca.gov, assigned by Regulations Coordinator]** and received at the ARB **no later than 12:00 noon, October 19, 2005**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon October 19, 2005**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43101, 43102, 43104, and 43105, and sections 27156, 38390, 38391 and 38395, Vehicle Code. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39500, 43000, 43013, 43017, 43018, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43150-43154, 43202, 43204, 43205.5, 43206, 43205.5, 43206, and 43210-43213, Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory

¹ The ISOR is entitled "Notice of Public Hearing to Consider Amendments to Adopt Reduced Emission Standards for 2007 and Subsequent Model Year New Heavy-Duty Diesel Engines" and may be accessed online at <http://www.arb.ca.gov/regact/HDDE2007/isor.PDF>.

language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER REQUIREMENTS TO REDUCE IDLING EMISSIONS FROM NEW AND IN-USE TRUCKS, BEGINNING IN 2008

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to California regulations for new and in-use heavy-duty diesel engines and trucks.

DATE: October 20, 2005

TIME: 9:00 a.m.

PLACE: California Environmental
Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 20, 2005, and may continue at 8:30 a.m., October 21, 2005. This item may not be considered until October 21, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before October 20, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 13, California Code of Regulations (CCR), sections 1956.8 and the incorporated "California Exhaust

Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," adopted December 12, 2002.

BACKGROUND

Health and Safety Code (HSC) sections 43013 and 43018 direct the ARB to adopt emission standards for new heavy-duty motor vehicles to achieve maximum feasible emission reductions. Additionally, HSC section 43104 directs the ARB to adopt test procedures to ensure compliance with those emission standards. Further, in 2000, the Board approved the Diesel Risk Reduction Plan, which recommended tightening particulate matter (PM) emission standards for heavy-duty diesel engines and vehicles. The 2003 State and Federal Strategy for the California State Implementation Plan (SIP) also calls for the reduction of reactive organic gases (ROG) and oxides of nitrogen (NOx) which, when combined with high ambient temperatures and sunlight, form ozone air pollution. NOx emissions contribute to secondary PM formation as well.

Exhaust emissions from heavy-duty diesel engines and vehicles have been regulated in California since 1973. With technological advancements and improved engine designs, more stringent standards have been implemented. For example, 2004 model-year engines must be certified to 50 percent lower NOx emissions compared to 1998 levels. When California's aftertreatment-forcing emission standards become effective in 2007, both NOx and PM emissions will be reduced by another 90 percent.

Emissions from extended and unnecessary idling pose a significant air quality concern. Idling emissions are particularly significant at locations such as truck stops, travel centers and rest areas where truck drivers stop to rest for long periods of time. Idling emissions are also significant at warehouse/distribution centers and port terminals, where loading and unloading of freight often require long waiting periods. Such locations can experience very high concentrations of trucks idling for extended periods of time, thereby producing highly localized and concentrated emission levels. These emissions affect the health of the drivers, truck stop, warehouse, ports personnel, and the neighboring community. The health concerns in particular become more serious when these idling spots are located in low-income communities that are already impacted by air pollution.

In crafting the proposal, ARB staff met with engine manufacturers, truck manufacturers, and other interested parties in several individual and group conference calls and meetings, including a public workshop on June 4, 2003, and March 23, 2005.

STAFF PROPOSAL

Staff's proposal consists of two parts. The first component regulates new 2008 and subsequent model year heavy-duty diesel engines, and the second component regulates in-use sleeper berth equipped trucks.

The first component applies to new 2008 and subsequent model year heavy-duty diesel engines in trucks with a gross vehicle weight rating greater than 14,000 pounds. Staff's proposal requires these heavy-duty diesel engines to be equipped with a non-programmable engine shutdown system that automatically shuts down the engine after five minutes of continuous idling. In lieu of the engine shutdown system, engine manufacturers may optionally certify to a NOx idling emission standard of 30 grams per hour.

The proposed in-use requirement applies to sleeper berth equipped trucks of all model years, including those registered out-of-state. It requires operators to manually shut off their engines before the 5-minute idling time is reached. This proposal will modify the airborne toxic control measure that was adopted in July 2004 (13, CCR, § 2485) that limits idling of diesel-fueled commercial heavy-duty vehicles and buses to include trucks with sleeper berths.

The proposal allows the use of optional alternative technologies to provide power for cab comfort and on-board accessories that would otherwise have required continuous idling of the vehicle's main engine. These cab comfort technologies include, but are not limited to, internal combustion auxiliary power systems (APS) and fuel-fired heaters. In order to operate in California, such technologies would need to comply with defined emission performance requirements. Other technologies that do not directly produce emissions, such as thermal storage systems, fuel cell APSs, and power inverter chargers for use with battery packs and grid-supplied electricity are also allowed. Technologies that are not identified in this proposal may also be used, provided they are approved by the Executive Officer. The use of these devices/strategies, in lieu of operating the truck engine at idle, will result in significant NOx and carbon dioxide reductions. Reductions in ROG and PM are also expected, but to a lesser extent depending on the type of alternative idle reduction device/strategy used.

COMPARABLE FEDERAL REGULATIONS

In January and October 2001, the United States Environmental Protection Agency and ARB, respectively, adopted new, harmonized exhaust emission standards for new 2007 and subsequent model heavy-duty diesel engines and vehicles. However, there are no comparable federal regulations addressing the idling reductions proposed herein.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Notice of Public Hearing to Consider Requirements to Reduce Idling Emissions from New and In-Use Trucks, Beginning in 2008".

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on October 20, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Stephan Lemieux, Manager, On-Road Heavy-Duty Diesel Section, (626) 450-6162, or Mr. Daniel Hawelti, Air Resources Engineer, (626) 450-6149.

Further, the agency representative and designated back-up contact persons to who nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/hdvidle/hdvidle.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create any costs or savings to any state agency

or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not significantly affect small businesses. The increase in the purchase price of new trucks with sleeper berths equipped with an alternative idling reduction device will be recaptured through fuel and maintenance savings within a 1- to 2.5-year period.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, October 19, 2005**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

Electronic mail is to be sent to: hdvidle@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, October 19, 2005**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon October 19, 2005**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 39614(b)(6)(A), 39658, 39667, 43000.5(d), 43013, 43013(b), 43013(h), 43017, 43018, 43018(b), 43018(c), 43100, 43101, 43102, 43104, 43105, 43806; Vehicle Code section 28114; and *Western Oil & Gas Assn. V. Orange County Air Pollution Control Dist. (1975), 14 Cal.3d411*. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39027, 39500, 39600, 39650, 39655, 39656, 39657, 39658, 39659, 39662, 39665, 39674, 39675, 42400, 42400.1, 42400.2, 42400.3, 42402, 42402.1, 42402.2, 42402.3, 42403.5, 42410, 43000, 43013, 43017, 43018, 43100, 43101, 43102, 43104, 43105, 43106, 43150-43154, 43202, 43204, 43205.5, 43206, 43210, 43211, 43212 and 43213, Health and Safety Code. Sections 305, 336, 350, 440, 445, 545, 546, 642, 680, 21400, 22452, 22515, 27153, 28114, 40001 and 40001(b)(5), Vehicle Code. Sections 1201, 1900, 1962 and 2480, title 13, CCR.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on

notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

CRIME PREVENTION AND CORRECTIONS

NOTICE IS HEREBY GIVEN that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3000, 3040, 3041, 3043, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045, 3045.1, 3045.2, 3045.3, 3075 and to adopt Section 3040.2 in the California Code of Regulations (CCR), Title 15 concerning bridging education, credit earning, inmate work/training incentive groups, excused time off, and timekeeping and reporting.

PUBLIC HEARING

Date and Time: **November 7, 2005**
9:00 am–12:00 pm

Place: Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close **November 7, 2005 at 5:00 pm**. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 358-2636; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 358-1655

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

Randy Marshall
Regulation and Policy Management Branch
Telephone (916) 358-1655

Questions regarding the substance of the proposed regulatory action should be directed to:

Fred Lembach
Division of Adult Institutions
Telephone (916) 323-0138

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: Savings of approximately \$33.4 million in State Fiscal Year 04/05, and savings of approximately \$59.6 million in State Fiscal Year 05/06.
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON JOB
AND/OR BUSINESS CREATION,
ELIMINATION OR EXPANSION**

The Department has determined that the proposed regulation will have no effect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

**AVAILABILITY OF PROPOSED TEXT AND
INITIAL STATEMENT OF REASONS**

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO
PROPOSED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person

indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

On May 10, 2005, Legislation (Senate Bill 737) was signed into law and became effective on July 1, 2005. On this effective date, the Youth and Adult Correctional Agency, which consisted of the California Department of Corrections (CDC), the California Youth Authority (CYA), the Board of Prison Terms, the Board of Corrections, the Youth Authority Board, and the Narcotic Addict Evaluation Authority was abolished, and reorganized into the California Department of Corrections and Rehabilitation.

Government Code (GC) Section 12838(a) creates the Department of Corrections and Rehabilitation (CDCR), headed by a secretary.

GC Section 12838.5 vests to the CDCR, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished entities: CYA, CDC, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and State Commission on Juvenile Justice, Crime and Delinquency Prevention. The abolished entities are known as "predecessor entities."

GC Section 12838.8 authorizes that all regulations adopted by the predecessor entities, continuing entities, and any of their predecessors are expressly continued in force, and any statute, law, rule, or regulation now in force or that may hereafter be enacted or adopted with reference to the predecessor entities and any of their predecessors shall mean the CDCR.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code refers to the CDCR, Division of Adult Operations.

Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections was abolished.

PC Section 5054 provides that the supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the director. Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5055 provides that all powers and duties granted to and imposed upon the Department of Corrections shall be exercised by the Director of Corrections, except where such powers and duties are expressly vested by law in the Board of Prison Terms. Commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR, except where those powers and duties are expressly vested by law in the new Board of Parole Hearings.

PC Section 5058 authorizes the Director of CDC to prescribe and amend regulations for the administration of prisons.

This action will incorporate into the CCR, Title 15, amended provisions concerning bridging education, inmate credit earning, inmate work/training incentive groups, excused time off, "S" time, and timekeeping and reporting.

The Fiscal Year 2003/2004 Budget Act directed the former CDC to provide education programming for day-for-day credit eligible inmates, pursuant to PC Section 2933, in Reception Centers (RC) and to expand the existing education programs within the General Population (GP) institutions. As a result, the former CDC incorporated new modifications and programs in the GP institutions, effective November 1, 2003, and also in the RCs, effective February 15, 2004. Included in these programs are education assessment, anger management, cognitive based re-entry orientation, life skills, and integration into the Arts in Corrections programs. In addition, the 2003/2004 Budget Act also mandated the priority hiring of day-for-day credit eligible inmates within the GP institutions.

These proposed regulations are necessary in order to establish regulations specifically related to the Bridging Education Program (BEP), and to update language concerning inmate credit earning, inmate work/training incentive groups, "S" time, and excused time off. Also, due to the elimination of the CDC Form 191, Inmate Timecard, language concerning timekeeping and reporting has been revised.

The amended regulations will:

- Clarify the definition of program failure, specifically addressing the language concerning the 180 day period in which an inmate may be considered a program failure.
- Establish the BEP in each institution and reception center for inmates who are day-for-day credit eligible pursuant to Penal Code Section 2933.

- Provide the criteria for inmate participation in the BEP and clarify how that participation will be evaluated.
- Establish that the reception center Inmate Assignment Officer shall have the authority to initiate a classification action to assign inmates to a reception center BEP and affect a work/training group change.
- Establish the BEP as a full-time credit earning special assignment.
- Establish a new starting date when general population inmates, and segregation inmates who are in Work Group A-1 or B, can be placed in a different work group because of a short-term medical/psychiatric inpatient hospitalization that will require a longer period of inpatient care (more than 29 calendar days).
- Establish a new starting date for a work group change for inmates who are long-term medical/psychiatric unassigned status, and their health condition necessitates that they become medically unassigned for 30 calendar days or more.
- Provide the process that is used to determine the program assignment and work group status for an inmate who has a determinable physical or mental impairment which limits his/her ability to participate in a work, academic, vocational, or other such program.
- Amend regulatory language concerning timekeeping and reporting by deleting any specific reference to the eliminated CDC Form 191, the CDC Form 1697, a "time" card, a "form", or any other document that is used to record the daily attendance of an inmate assigned to a credit qualifying assignment. This deleted language will be replaced with, for easier reference and consistency, a "timekeeping log".
- Provide that an authorized "timekeeping log" shall be used to record the daily attendance of each inmate assigned to a credit qualifying assignment, and that the log shall be the reference for resolving inmate complaints or appeals and shall be retained at a secure location for a period of 4 years from the date of completion.
- Clarify language concerning the eligibility of worktime credit earning for inmates who agree to serve their term in another state or federal institution, or who are serving a concurrent term in another jurisdiction. In addition, provide specific reference to the authority that enables the Department to transfer and exchange prisoners with other states.

- Update language concerning the credit earning status of inmates who refuse a full-time qualifying assignment or are placed on non-credit earning by a classification committee. In addition, because inmates will continue to earn worktime credits that is commensurate with their assigned work group, even for absent days or an unauthorized absence, language concerning denied worktime credit for inmates who are not authorized to be absent from their assignment will be deleted.
- Update language concerning excused time off (ETO). Because inmates no longer earn and accrue ETO, but instead may use ETO that is authorized, all references to earned, accrued, accumulated, credited, or forfeited ETO has either been deleted, or amended to reflect that an inmate may use ETO that is authorized.
- Clarify the credit earning status of an inmate who has been transferred to another institution for non-adverse reasons. Amended language will specify that an inmate in a vocational/training program at the sending institution shall be assigned the same or similar program, if eligible, at the receiving institution unless the program has no vacancy or is unavailable. If the program is full or unavailable, the inmate shall be placed on any existing waiting list based on credit earning status, release date, and the length of time they have spent on the institution's waiting list. Inmates who are day-for-day credit eligible per PC 2933 shall be given priority for assignment.
- Specify which inmates on the institution's waiting list will have first, second, third, and fourth priority for placement.
- Establish that inmates being processed in reception centers, not on layover status, who are eligible to earn day-for-day credit, are eligible to be assigned to a full-time BEP. In addition, clarify that inmates being processed in reception centers, who are ineligible to earn day-for-day credits, can be assigned to half-time work/training programs.
- Clarify that sentence reducing "S" time is no longer credited but instead shall be noted on timekeeping documents for an authorized absence, and that the inmate shall receive sentence reducing credit commensurate with their designated work group. In addition, inmates who are removed from their work/training assignment for authorized reasons, shall retain their existing work/training group status unless otherwise impacted by a classification committee or disciplinary action.

- Clarify that each inmate will be advised that failure to comply with departmental grooming standards may result in the issuance of an administrative rule violation report and that a repeated pattern of administrative violations, may result in the inmate being deemed a program failure pursuant to Section 3000.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held on Thursday, October 20, 2005 from 9:00 am–3:00 pm at the Hilton San Diego Airport/Harbor Island, 1960 Harbor Island Drive, San Diego, California 92101, Room Name: Spinnaker. Written comments must be received by the Board of Chiropractic Examiners at 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833-2931, or by fax at 916/263-5369, or by e-mail addressed to rullrich@chiro.ca.gov, no later than 5:00 p.m. on October 20, 2005, or must be received by the Board at the hearing. The Board of Chiropractic Examiners, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] and to implement, interpret or make specific Section 5 of the Chiropractic Initiative Act [Section 1000-5 of the Business and Professions Code], the Board of Chiropractic Examiners is considering changes to Division 4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Revise Section 384. Disciplinary Guidelines. Section 4(b) of the Chiropractic Initiative Act [Section 1000-4(b) of the Business and Professions Code] gives the Board the responsibility for implementing regula-

tions they deem necessary for the performance of its work in order to maintain a high standard of professional services and the protection of the public.

The Board's Disciplinary Guidelines is a reference tool intended to assist Board members, Deputy Attorneys General and Administrative Law Judges in imposing appropriate penalties for licensees who have violated the laws and regulations governing the practice of chiropractic. The proposed amendments will streamline and update the document to meet current Board policies pertaining to its enforcement program.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has determined that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board of Chiropractic Examiners has determined that this regulatory proposal will not affect the creation or elimination of jobs, the creation of new businesses or the elimination of existing business, or the expansion of businesses currently doing business, within the State of California.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Housing Costs: The Board has made an initial determination that the proposed regulatory action will not affect housing costs.

Small Business Impact: Because the proposed amendment is directed at individual licensees who violate the law, the proposed amendment will not affect small businesses operating within the law.

CONSIDERATION OF ALTERNATIVES

The Board of Chiropractic Examiners must determine that no alternative which it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Chiropractic Examiners has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

FEDERAL LAW

The proposed amendments do not duplicate or conflict with any federal law.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons and other information, if any, may be obtained at the hearing or prior to the hearing upon request from:

Board of Chiropractic Examiners
Rita Ullrich, Associate Governmental
Program Analyst
2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833-2931

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at the above address.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, and the initial statement of reasons.

CONTACT PERSON

Inquiries concerning the proposed administrative action and inquiries regarding the substance of the proposed regulation may be addressed to Rita Ullrich at the above address or at 916/263-5360. An alternative contact for information regarding the proposed amendment is David Hinchee at the above address or at 916/263-5340.

When prepared, copies of the final statement of reasons will be available from the contacts listed above.

INTERNET ACCESS OF DOCUMENTS

Copies of the documents referred to in this notice are available via internet at www.chiro.ca.gov.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

**CESA CONSISTENCY DETERMINATION FOR
Feather-Bear-WPIC Levee Project
Yuba County**

The Department of Fish and Game (Department) received a notice on August 18, 2005 that the Three Rivers Levee Improvement Authority (TRLIA) proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of various levee improvements designed to reduce current threats to levee integrity along areas of the Feather River, Bear River, and Western Pacific Interceptor Canal (WPIC) in southern Yuba County. The activities will require wetlands filling, trenching, and construction of setback levees, which will result in temporary impacts to 95.76 acres and permanent impacts to 44.79 acres of giant garter snake habitat.

The U.S. Fish and Wildlife Service, on August 10, 2005, issued to the U.S. Army Corps of Engineers (Corps), a no jeopardy federal biological opinion (1-1-05-F-0106) which considers the Federally and State threatened giant garter snake (*Thamnophis gigas*), and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, TRLIA is requesting a determination that federal biological opinion 1-1-05-F-0106 is consistent with CESA. If the Department determines that the federal biological opinion is consistent with CESA, TRLIA will not be required to obtain an incidental take permit for the proposed project.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

California Endangered Species Act (CESA)

No. 2080-2005-019-04

Project: Lamont Public Utility District Effluent
Disposal Site Expansion

Location: Lamont, Kern County

Notifier: Lamont Public Utility District

BACKGROUND

The Lamont Public Utilities District (LPUD), a small local agency in Kern County, California, proposes an expansion of an existing sewage effluent disposal site (Project) due to local growth patterns and agricultural demographics. LPUD is responsible for sewage treatment and handling of wastewater disposal for the unincorporated town of Lamont. The Project may be operated directly by LPUD or another contractor at some point in the future.

The Project is in response to violations of, and is necessary to bring LPUD into compliance with, Waste Discharge Requirements (WDRs) issued by the Regional Water Quality Control Board (Board) that govern LPUD's operation. The Project is being conducted in cooperation with the Board because of increasing population with a concomitant capacity need for increased effluent disposal capacity. Regulations require a 30-year capacity for spreading grounds. Although a small town of about 3,900 families, most of whom are farm workers, Lamont is experiencing steady growth. In Lamont, several working farm families often reside together in a single dwelling. This type of living arrangement increases sewer usage above what would typically be experienced for a single family dwelling. Existing operations have received several violations from the Board; consequently, implementation of this expansion is extremely important.

The Project site is located on approximately 160 acres in the SE ¼, Section 25, T31S, R28E, Weed-patch Quadrangle, Mt. Diablo, Base and Meridian, Kern County, California. The site is approximately 2.5 miles south of the town of Lamont, adjacent to the west side of Wheeler Ridge Road (State Highway 184), which borders the eastern property boundary. Dirt roads for farm access run alongside the northern and southern boundaries of the Project site. The western side is bound by land operated as a composting facility by the Community Recycling and Resource Recovery Inc. Bear Mt. Boulevard, State Highway 223, runs east and west approximately 0.5 miles north of the Project site. Existing LPUD sewage treatment ponds are located in the same Section to the northwest of the proposed Project spreading site.

The Project involves construction of two ponds totaling 21 acres on the 160-acre Project site, which itself includes 19 acres of Tipton kangaroo rat habitat. Pond construction will occur primarily in disturbed areas on the Project site that are reported as unoccupied by Tipton kangaroo rat. The remaining 139 acres will be graded for access roads and leveled. The east side of the property including the power line right-of-way will be planted in corn, alfalfa, or another forage crop that can be irrigated and harvested periodically through standard cultivating and harvesting techniques. A series of terraced benches may be constructed on the east side of the site, which is designated for agricultural use, which currently surrounds most of the Project site. Effluent would be spread aerially onto the benches, which would be about 600 feet wide, with approximately a four-foot gently-sloped drop between each bench. The terraced leaching benches would be used sequentially. This will allow evaporation and infiltration of the effluent into the soil while water is being spread on other benches. The effluent will be spread on each pad, as needed. Following the completion of infiltration and drying, each bench will be disked several times per year to maintain the highest levels of permeability and percolation. Winter wheat, corn, alfalfa or another forage crop may be planted on the benches and harvested periodically.

Because of the Project's potential to take species protected by the Federal Endangered Species Act, on July 6, 2005, the Service issued Incidental Take Permit No. TE106826-0 for the Lamont Public Utility District Effluent Disposal Site Expansion and HCP, describing the Project actions and setting forth measures to mitigate impacts to the San Joaquin kit fox (*Vulpes macrotis mutica*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and their habitat. San Joaquin kit fox is also listed as a threatened species and Tipton kangaroo rat is listed as an endangered species under the California Endangered Species Act, Fish and Game Code Section 2050 et seq. On July 22, 2005, the Director of DFG received a request from Clinton Stewart, representing LPUD, pursuant to Section 2080.1 of the Fish and Game Code that DFG find the Federal Incidental Take Permit and HCP consistent with CESA.

Implementation of the Project will result in the loss of 19 acres of occupied Tipton kangaroo rat habitat, which also provides suitable foraging habitat for the San Joaquin kit fox. This loss shall be compensated for by the protection and management in perpetuity of 57 acres of habitat at DFG's Cole's Levee Preserve in Kern County, which currently supports populations of both covered species. These compensation credits were purchased and \$21,375 was placed in an endowment account in February 1998.

DETERMINATION

Based on the terms and conditions in the Federal HCP and Incidental Take Permit No. TE106826-0, DFG has determined that the Project is consistent with CESA because the Project and mitigation measures meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of species protected under CESA. Important to DFG's findings are several measures from the HCP that address expected or potential impacts to San Joaquin kit fox and Tipton kangaroo rat. These include, but are not limited to, the following:

1. LPUD shall compensate for impacts to 19 acres of habitat through the conservation and management of at least 57 acres of suitable kit fox and Tipton kangaroo rat habitat. This land has been already acquired and transferred to DFG. LPUD also provided an endowment sum of \$375 per acre or \$21,375, and also provided an enhancement fund to DFG of \$100 per acre or \$5,700, to fence, provide clean-up, and other enhancements on the 57 acres. The compensation credits were obtained and the endowment and enhancement funds provided to DFG prior to completion of the HCP and Permit.
2. A qualified biologist shall conduct a pre-activity survey of the Project site no more than 30 days prior to construction to assess endangered species presence and distribution.
3. If Tipton kangaroo rats are present, LPUD shall provide an estimation of numbers to the Service and DFG and the two agencies shall determine whether Tipton kangaroo rats are to be trapped, salvaged, or relocated and shall provide their direction to LPUD in writing.
4. After trapping, all potential kangaroo rat burrows in the area to be disturbed shall be hand excavated prior to construction activities to insure that they are not occupied by Tipton kangaroo rat.
5. Any potential San Joaquin kit fox dens shall be tracked by a qualified biologist in accordance with standard agency guidelines to determine if they are active. If they are determined to be inactive, the dens shall be closed. If they are active, the Service and DFG shall be contacted to determine the appropriate course of action.
6. Project boundaries, dens/burrows, or buffer zones to be avoided during construction shall be flagged and posted as necessary to prevent straying of vehicles and equipment into adjacent areas where take could occur. The applicant shall consult with a qualified biologist to determine the necessity and extent of flagging and posting.
7. All construction equipment, staging areas, materials and personnel shall be restricted to the Project site or previously disturbed off-site areas that are not habitat for listed species.
8. All steep-walled pipeline and utility trenches shall be inspected in the mornings to prevent entrapment of kangaroo rats and/or kit fox, or shall be provided escape ramps as determined by a qualified biologist. All trenches shall be inspected prior to back-filling and a qualified biologist shall remove any entrapped wildlife or allow animals to escape voluntarily prior to resuming construction.
9. All pipe, culverts, or similar structures on-site with a diameter of 2–24 inches shall be inspected for endangered species prior to moving or welding, and shall be immediately capped or otherwise covered if sections cannot be inspected to prevent the entry and potential loss of wildlife. If an endangered species is discovered inside a pipe, the animal shall be safely removed by a qualified biologist. The pipe segment shall not be moved until the animal has escaped, or the pipe segment shall be moved a single time out of the path of construction. Alternatively, stored pipe shall be kept capped at all times until use during construction.
10. Any dead, sick or injured threatened or endangered species shall be reported within 48 hours to the Sacramento office of the Service and the Fresno office of the DFG.
11. If incidental take of Tipton kangaroo rat or San Joaquin kit fox occurs during construction, the causative action shall cease immediately, and the Service and DFG shall be contacted immediately for further guidance. Consultation may be reopened as necessary.
12. An employee training program shall be conducted by a qualified biologist prior to construction to educate all workers on identifying threatened and endangered species along with the mitigation measures and the reporting requirements of the Section 10(a) Permit.
13. LPUD shall include in all construction contracts a requirement that the contractor comply with the mitigation requirements of the Service and DFG. If compliance with this requirement is not possible, LPUD shall explain in writing to the Service and DFG why this measure can not be fully implemented.
14. A qualified biologist shall be present on site during the initial land clearing to insure implementation of the mitigation measures.

Pursuant to Section 2080.1 of the Fish and Game Code, no further authorization under CESA is required for incidental take of San Joaquin kit fox or Tipton kangaroo rat resulting from this Project, provided the Project is implemented as described in the HCP. If there are any substantive changes to the Project as

described in the HCP or Incidental Take Permit, including changes to the mitigation measures, or if the Service amends or replaces the HCP, the LPUD Effluent Disposal Site Expansion shall need to obtain a new Consistency Determination or a CESA Incidental Take Permit from the DFG.

DFG requests that the LPUD provide copies of all annual reports, other monitoring reports, and other circulated materials relevant to the Project's effects on San Joaquin kit fox and Tipton kangaroo rat to DFG at the following address or at any substitute location that DFG may subsequently identify.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the California Fish and Game Commission, at its August 18, 2005, meeting in San Luis Obispo, accepted for consideration the petition submitted by the Department of Fish and Game to uplist Baker's larkspur (*Delphinium bakeri*), found in Marin County, California, from rare to endangered species status. Pursuant to subdivision (a)(2) of Section 2074.2 of the Fish and Game Code, the aforementioned species is hereby declared a candidate species as defined by Section 2068 of the Fish and Game Code.

Within one year of the date of publication of this notice of findings, the Department of Fish and Game shall submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. Copies of the petition, as well as minutes of the August 18, 2005, Commission meeting, are on file and available for public review from Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Written comments or data related to the petitioned action should be directed to the Commission at the aforementioned address.

FISH AND GAME COMMISSION

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission, on May 6, 2005, received a petition from the Department of Fish and Game to remove the Siskiyou Mountains salamander (*Plethodon stormi*) from the Threatened Species List.

Siskiyou Mountains salamanders require moist microclimates. These salamanders occupy talus in a wide range of forest types and varied overstory canopy cover.

Pursuant to Section 2074.2 of the Fish and Game Code, the Commission will consider this petition at its September 29, 2005, meeting in Susanville.

Interested parties may contact Mr. Mark Stopher, Acting Chief, Habitat Conservation Planning Branch, Department of Fish and Game, at telephone (916) 653-4875 for information on the petition or to submit information to the Department relating to the petitioned species.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Small Off-Road Engines

On September 20, 2004, OAL approved a large regulatory filing from the Air Resources Board (ARB) adopting exhaust and emission control requirements for small off-road engines less than or equal to 19 kilowatts and equipment that use such engines. During the rulemaking process, on May 14, 2005, the ARB issued a "Second Notice of Public Availability of Modified Text", which added a footnote #4 to Table 1 of section 2754, as follows: "4. Applies to small production volume tanks exempted pursuant to section 2766." In the Final Regulation Order submitted to OAL with the rulemaking record, the first portion of this footnote, including the number designation, was mistakenly omitted, therefore, reading as follows at the end of footnote #3: "mall production volume tanks exempted pursuant to section 2766." This then appeared to be words inadvertently remaining from an earlier version of footnote #3 and were deleted from the final text corrections provided to OAL for filing with the Secretary of State. This filing without regulatory effect reinstates footnote #4 to follow Table 1 in section 2754 which had gone

through the rulemaking process and was inadvertently removed from the text filed with the Secretary of State on September 20, 2004.

Title 13
California Code of Regulations
AMEND: 2754
Filed 08/18/05
Effective 08/18/05
Agency Contact: Alexa Malik (916) 322-4011

AIR RESOURCES BOARD
Vapor Recovery Equipment Defects List

This action updates the list of recognized defects that may occur in fuel vapor recovery systems at service stations that substantially impair their effectiveness for the purpose of facilitating uniform and effective field inspections by air district personnel who use the list.

Title 17
California Code of Regulations
AMEND: 94006
Filed 08/18/05
Effective 09/17/05
Agency Contact:
Leslie M. Krinsk (805) 473-7325

BOARD OF EDUCATION
Standardized Testing and Reporting Program (STAR)

This regulatory action makes changes to the Standardized Testing and Reporting Program.

Title 5
California Code of Regulations
AMEND: 850, 851, 852, 853, 853.5, 854, 855, 857, 858, 859, 861, 862, 863, 864, 864.5, 865, 866, 867, 867.5, 868870
Filed 08/22/05
Effective 09/21/05
Agency Contact: Debra Strain (916) 319-0641

CALIFORNIA HORSE RACING BOARD
Entry of Claimed Horse

Existing regulation provides that any horse claimed out of a claiming race is not eligible to race in any State other than California until the close of the meeting where it was claimed except in a stakes race. This regulatory action would revise this prohibition to extend for another 60 days after the close of the meeting and also clarifies that the California State Fair Circuit is considered one meeting.

Title 4
California Code of Regulations
AMEND: 1663
Filed 08/24/05
Effective 08/24/05
Agency Contact: Harold Coburn (916) 263-6397

CALIFORNIA HORSE RACING BOARD
Pick N Pool

This regulatory action revises the Pick (n) Pool rule to allow the totalizator to display information pertaining to possible Pick (n) Pool payouts when the last race of the Pick (n) Pool is the only race remaining to be run, and provide that if the racing surface unexpectedly changes, that race is viewed as a winning race for purposes of the Pick (n) Pool.

Title 4
California Code of Regulations
AMEND: 1976.9
Filed 08/17/05
Effective 08/17/05
Agency Contact: Pat Noble (916) 263-6033

CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD
Misc. Changes Without Regulatory Effect

The California Integrated Waste Management Board is making the captioned amendments in order to provide editorial corrections.

Title 14, 27
California Code of Regulations
AMEND: Title 14, sections 17850(a); 17852(a)(5), (a)(11), (a)(12), (a)(13), (a)(15), (a)(16), (a)(21), (a)(22), (a)(24), (a)(36), (a)(41); 17855(a), (a)(5)(A); 17855(a)(5)(B), (a)(7); 17855.4(a), (c), (d)(1), (d)(2), (d)(3); 17856(a), (c), (c)(1); 1
Filed 08/23/05
Effective 09/22/05
Agency Contact: Lynn Smith (916) 341-6364

COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING
Background Investigations

This regulatory action amends the requirements for background investigations for reserve peace officers.

Title 11
California Code of Regulations
AMEND: 1002, 1007, 1018, 1008, 1015
Filed 08/22/05
Effective 09/21/05
Agency Contact:
Patricia Cassidy (916) 227-4847

COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING
Amendments to Conform with Government Code

This regulatory action amends existing provisions on high school education to be consistent with subsection (e) of Government Code section 1031 and deletes the minimum GED score.

Title 11
California Code of Regulations
AMEND: 1001, 1002, 1007

Filed 08/22/05
 Effective 09/21/05
 Agency Contact:
 Patricia Cassidy (916) 227-4847

DEPARTMENT OF CORRECTIONS

DNA and Forensic Identification Program

The Department of Corrections and Rehabilitation is amending section 3025, title 15, California Code of Regulations, entitled "Department of Justice DNA and Forensic Identification Database and Data Bank Program". The amendments will bring the requirements of section 3025 into compliance with those changes made by Proposition 69, DNA Fingerprint Unsolved Crime and Innocence Protection Act; Penal Code Sections 295, et seq.

Title 15
 California Code of Regulations
 AMEND: 3025
 Filed 08/23/05
 Effective 09/22/05
 Agency Contact:
 Ann Cunningham (916) 322-9702

DEPARTMENT OF FISH AND GAME

Marine Aquaria Receiver's License/Commercial Salmon Vessel Permit

The Department is amending its Commercial Salmon Vessel Permit fee pursuant to the specific formula and method prescribed in statute (Fish and Game Code section 713) and repealing its regulation on Marine Aquaria Receiver's License Fee to avoid conflict with the fee amount in statute (Fish and Game Code section 8033.2).

Title 14
 California Code of Regulations
 AMEND: 183 REPEAL: 188
 Filed 08/24/05
 Effective 08/24/05
 Agency Contact:
 Jerilyn Santillan (916) 227-0564

DEPARTMENT OF HEALTH SERVICES

Long Term Care Rates Fiscal Year 2002-03

This regulatory action adopts long-term care rates for the 2002-2003 rate year for which the Legislature enacted funding in the 2002-2003 Budget Act, Items 4260-101-0001 and 4260-101-0890 (Stats. 2002, ch. 379). This regulatory action is deemed an emergency necessary for the immediate preservation of the public peace, health, and safety and general welfare pursuant to subdivision (a) of Welfare and Institutions Code section 14105.

Title 22
 California Code of Regulations
 AMEND: 51510, 51510.1, 51511, 51511.5, 51511.6, 51535, 51535.1, 51544, 54501

Filed 08/24/05
 Effective 08/24/05
 Agency Contact:
 Lynette Cordell (916) 650-6827

DEPARTMENT OF MANAGED HEALTH CARE

Block Transfer Filings

This action adopts procedures governing block transfers of health plan enrollees.

Title 28
 California Code of Regulations
 ADOPT: 1300.67.1.3
 Filed 08/22/05
 Effective 09/21/05
 Agency Contact:
 Elaine Paniewski (916) 324-9024

FISH AND GAME COMMISSION

Special Provisions for Black Bass Tournaments

This regulatory action allows the Department of Fish and Game to permit participants in permitted black bass contests to continue fishing and culling once the legal limit has been taken.

Title 14
 California Code of Regulations
 AMEND: 230
 Filed 08/23/05
 Effective 09/22/05
 Agency Contact: Sherrie Koell (916) 653-4899

FISH AND GAME COMMISSION

Silver King Creek Fishing Regulations

This emergency action extends the fishing closure on Silver King Creek in Alpine County from above the intersection with Snodgrass Creek. The fishing closure extension is part of the Commission's Paiute cutthroat trout recovery plan.

Title 14
 California Code of Regulations
 AMEND: 7.50
 Filed 08/23/05
 Effective 08/23/05
 Agency Contact: Sherrie Koell (916) 653-4899

NEW MOTOR VEHICLE BOARD

Subpoenas, Requests for Discovery

This is a nonsubstantive change amending references in the regulation to statutes due to reorganization of those statutes, specifically, the Code of Civil Procedure (Stats. 2004, Ch. 182).

Title 13
 California Code of Regulations
 AMEND: 551.2, 551.15
 Filed 08/24/05
 Effective 08/31/05
 Agency Contact:
 Howard Weinberg (916) 445-2080

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD****Heat Illness Prevention**

Establishes workplace standards relating to outdoor places of employment to prevent the occurrence of heat related illnesses.

Title 8

California Code of Regulations

ADOPT: 3395

Filed 08/22/05

Effective 08/22/05

Agency Contact: Marley Hart (916) 274-5721

STATE WATER RESOURCES CONTROL BOARD**North Coast Water Quality Control Plan**

Amends the Water Quality Control Plan for the North Coast Region to authorize compliance schedules in National Pollution Discharge Elimination System (NPDES) permits.

Title 23

California Code of Regulations

ADOPT: 3906

Filed 08/18/05

Effective 08/18/05

Agency Contact:

Joanna Jensen (916) 657-1036

STATE WATER RESOURCES CONTROL BOARD**Underground Storage Tanks, Hydrostatic Monitoring**

In this Certificate of Compliance regulatory action, the State Water Resources Control Board amends its underground storage tank regulations to add a definition of the term "Interstitial Liquid Level Measurement" Method (as used in Health and Safety Code section 25290.1) or "Hydrostatic Monitoring" Method.

Title 23

California Code of Regulations

AMEND: 2611

Filed 08/19/05

Effective 08/19/05

Agency Contact: Scott Bacon (916) 341-5873

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN MARCH 30, 2005
TO AUGUST 25, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the

Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

08/15/05 AMEND: 51000

08/09/05 ADOPT: 59520

08/04/05 AMEND: 2271

07/27/05 ADOPT: Div. 8, Ch. 23, Sec. 44000

07/20/05 ADOPT: 18530.7

07/20/05 AMEND: 18570

07/18/05 AMEND: 18452

07/18/05 AMEND: 55400

07/06/05 AMEND: 7286.0

06/24/05 AMEND: 599.502, 599.506

06/21/05 AMEND: 18705.5

06/16/05 AMEND: Div. 8, Ch. 4, section 25001

06/14/05 ADOPT: 18750.2, 18755 AMEND: 18702.4

05/31/05 ADOPT: 1859.300, 1859.301, 1859.302, 1859.310, 1859.311, 1859.312, 1859.313, 1859.314, 1859.315, 1859.316, 1859.317, 1859.318, 1859.319, 1859.320, 1859.321, 1859.322, 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.325, 1859.326, 1859.327, 1859.328, 185

05/27/05 AMEND: 20107

05/27/05 AMEND: 1859.2

05/26/05 AMEND: 1859.2, 1859.81, 1866

05/26/05 ADOPT: 18465.1

05/24/05 ADOPT: 1859.23 AMEND: 1859.2, 1859.122, 1859.123, 1859.123.1

05/12/05 ADOPT: 1859.71.4, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83, 1859.125, 1859.125.1, 1859.145, 1859.163.1, 1859.164.2

05/03/05 ADOPT: 20800.1, 20800.2, 20800.3, 20800.4, 20800.5, 20800.6, 20800.7, 20800.8, 20800.9, 20801.1, 20801.2, 20801.3 AMEND: 20800, 20801, 20802

05/02/05 ADOPT: 18640 AMEND: 18941.1, 18946, 18946.1, 18946.2, 18946.4

04/26/05 AMEND: 1859.2, 1859.42

04/19/05 AMEND: 172.4, 172.5, 172.6, 172.7, 172.8, 172.9, 172.10

Title 3

08/12/05 AMEND: 3700(c)

08/08/05 ADOPT: 1811, 1812, 1850 AMEND: 1804, 1806, 1808, 1831, 1930, 1931, 1932, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1950 REPEAL: 1809, 1810, 1851, 1851.1, 1870.1, 1870.2, 1871, 1872, 1873, 1951, 1960, 1961

07/21/05 AMEND: 6400

07/11/05 AMEND: 3423(b)

07/01/05 AMEND: 2311(b)

06/27/05 ADOPT: 3591.18

06/22/05 AMEND: 3430(b)
 06/09/05 ADOPT: 3700
 06/03/05 ADOPT: 3963
 05/23/05 AMEND: 3636(a)(c)
 05/16/05 AMEND: 6388
 05/09/05 ADOPT: 1392.2(t), 1392.4(h), 1392.4(i),
 1392.4(j), 1392.9(c), 1392.9(d),
 04/15/05 AMEND: 1446.9(c), 1454.16(c)
 04/04/05 AMEND: 6400

Title 4

08/24/05 AMEND: 1663
 08/17/05 AMEND: 1976.9
 08/08/05 AMEND: 1887
 06/27/05 ADOPT: 10175, 10176, 10177, 10178,
 10179, 10180, 10181, 10182, 10183,
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 07/11/05 AMEND: 8002, 8004, 8012, 8014
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